



DAC/JRW

File No.: 12997-25US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/765,082 Confirmation No. 9803
Applicant: MOTARD, Marcel
Filed: January 28, 2004
Art Unit: 2854
Title: ROLLING ELEMENT ADJUSTMENT SYSTEM
Examiner: CRENSHAW, Marvin P.

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Office of Petitions
Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Sir:

The above-identified application became abandoned for allegedly failing to timely file corrected drawings as required by the Notice of Allowability.

The Notice of Abandonment was mailed on 03/01/2006.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

1. Outstanding Drawings

The outstanding replacement drawing sheets 1/2-2/2 (comprising Figs. 1-2), which were allegedly not received by the USPTO, are enclosed herewith.

2. Petition Fee

Pursuant to 37 CFR 1.137(b)(2), the petition fee of \$1500 as set forth in 37 CFR 1.17(m) is to be charged to Deposit Account Number 19-5113. Should any additional fees be required, the Director is hereby authorized to

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STATEMENT OF FACTS

ACCOMPANYING

PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

Sir:

Applicants are providing the following statement of facts accompanying the present petition under 37 CFR 1.137(b) for the revival of the above-referenced unintentionally abandoned application, in support of the statement that the entire delay in filing the required reply was unintentional.

- (1) This application was originally filed on January 28, 2004 with "informal" drawings, comprising Figs. 1-2.
- (2) In the first Office Action issued by the USPTO on May 4, 2005, the drawings as filed on January 28, 2004 were indicated as being accepted by the Examiner, Marvin P. Crenshaw. (see copy of Office Action Summary attached herewith) The applicant replied to this Office Action on September 6, 2005 (i.e. with a one-month extension of time), but did not modify the drawings on file by this amendment.
- (3) On September 7, 2005, the applicant filed replacement "formal drawings" in order to replace the corresponding, but less clear, drawings originally filed. The

The Commissioner of Patents and Trademarks

charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 19-5113.

3. Statement

In accordance with 37 CFR 1.137(b)(3), the entire delay in filing the required reply from the due date until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. Enclosed herewith is a Statement of Facts, explaining the reasons for the abandonment and supporting the present statement that the entire delay in filing the required reply was unintentional.

4. Terminal disclaimer with disclaimer fee

As the present utility application was filed on or after June 8, 1995, no terminal disclaimer is believed to be required pursuant to CFR 1.137(d).

Confirmation that the present petition has been granted, and that the application will continue to issuance, is respectfully requested in due course.

Respectfully,



May 3, 2007

Date

T. James REID, Reg. No. 56,498
OGILVY RENAULT, LLP
Customer Number 32292
Tel.: (514) 847-4311

replacement drawings were otherwise identical to those as originally filed. A copy of this submission as filed in the USPTO on September 7, 2005, which included a cover letter and two sheets of replacement drawings, is enclosed herewith.

- (4) A Notice of Non-Compliant Amendment (copy attached herewith) was issued by the USPTO on September 14, 2005, indicating that the submission of replacement drawings as filed on September 7, 2005 was considered non-compliant for failing to correctly identify the drawings sheets using a "Replacement Sheet" identifier in the top margin thereof. The Notice provided for a period of one month from the mailing date to supply the corrected drawings. It is of note that the Notice indicates that failure to timely respond to the Notice will result in non-entry of the amendment if it is a preliminary or supplemental amendment, which was the case.
- (5) On October 12, 2005, Examiner Marvin Crenshaw telephoned the undersigned (T. James Reid) regarding the required replacement drawings. Mr. Crenshaw proposed that he would enter the necessary replacement drawings by an Examiner's amendment, and asked the undersigned to send him the drawings directly. It was therefore agreed by telephone with Mr. Crenshaw, at his request, that the applicant would fax the corrected drawings, which included the "Replacement Sheet" indicators, *directly to Mr. Crenshaw himself at his fax no. 571-273-2158*. In accordance with the Examiner's request, the undersigned sent the corrected replacement drawings sheets 1/2-2/2 (Figs. 1-2) to him by fax on October 12, 2005. Copies of the Fax cover sheet addressed to Mr. Crenshaw, confirmation that the fax was received and the two(2) replacement drawings sheets included with the fax, are enclosed herewith.
- (6) A Notice of Allowance was mailed on October 17, 2005, which indicated that Corrected Drawings needed to be submitted, which included the changes required by the Examiner's Amendment dated October 12, 2005 and included with the Notice of Allowance. Believing that the necessary corrected drawings had already been submitted, as they were sent directly to the Examiner as per his specific request, the issue fee was paid by the applicant on January 17, 2006.

- (7) On January 19, 2006, a Supplemental Notice of Allowability was mailed by the USPTO which was stamped by the Examiner's supervisor, Andrew H. Hirshfeld (Supervisory Patent Examiner, TC 2800). This Supplemental Notice of Allowable provided a three month deadline for submitting corrected drawings, indicated as being required by the Examiner's amendment of 10/12/2005. A copy of the Supplemental Notice of Allowance is enclosed herewith.
- (8) Upon receipt of the Supplemental Notice of Allowability and thus realizing that there may have been a problem with the corrected drawings, which were submitted directly to Examiner Crenshaw on October 12, 2005, the undersigned telephoned Mr. Crenshaw on March 16, 2006 to discuss the matter. The facts as outline above were explained to Mr. Crenshaw. He advised that he would discuss the matter with his supervisor, and get back to the undersigned – which he never did.
- (9) Accordingly, having not heard back from the Examiner and in response to the Supplemental Notice of Allowability (which provided three months from the mailing date thereof to submit the corrected drawings) the applicant timely refiled the replacement drawings in the USPTO on April 18, 2006. A copy of this submission as filed is enclosed herewith.
- (10) A Notice of Abandonment was mailed on March 1, 2006, indicating that the application had become abandoned for allegedly failing to timely file the corrected drawings.
- (11) The applicant submits that the drawings as originally filed in the application were never objected to by the USPTO, and therefore the effect of not allegedly timely submitting the corrected drawings should only have had the effect that these were not entered.
- (12) The present applicant is assigned to RDP Marathon Inc., the employer of the named inventor at the time that the application was filed. However, the assignee went bankrupt in 2005, and owed a considerable amount of unpaid accounts to Ogilvy Renault, the firm at which the undersigned and all practitioners of

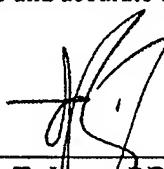
customer number 20988 work. Although the undersigned continued to carry on some work for the assignee for a period of time after the initial announcement of the bankruptcy in mid 2005, no work was done on behalf of the assignee, and therefore the applicants of the present application, after April 2006 due to the financial situation of the client.

(13) Therefore, given the troubled financial situation of the assignee of the present application, and therefore the cessation of work on all files belonging to said assignee between April 2006 and the present, the undersigned submits that the entire delay between the Notice of Abandonment and this petition was unintentional.

The undersigned, T. James Reid, declares that all of the information contained in the present Statement of Facts is true and accurate to the best of his knowledge.

May 3, 2007

Date



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